

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10484 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SALIMKHAN LALKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR CB Dastoor for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Surat City, Surat, passed an order on October 15, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Salimkhan Lalkhan Pathan under the provisions of the PASA

Act.

#. In the grounds of detention, the detaining authority took into consideration 9 offences registered against the detainee and statements of two anonymous witnesses in respect of the incidents dated June 29, 1999 and July 12, 1999. The detaining authority found that the detainee is a "dangerous person" and his activities are required to be immediately prevented and as resorting to less drastic remedy under the ordinary laws is not possible, he is required to be immediately detained under the PASA Act. The detaining authority exercised powers under section 9(2) of the PASA Act in respect of the anonymous witnesses after recording satisfaction about the correctness and genuineness of the statements and fear expressed by the witnesses qua the detainee.

#. The petitioner-detainee preferred this petition through jail. It is contended by Mr. Dastoor that the statements of two anonymous witnesses relied upon by the detaining authority are recorded on July 30, 1999 and July 31, 1999. They are verified by the detaining authority on October 15, 1999 and the order is passed on that very day. He further submitted that there is improper exercise of powers under section 9(2) of the PASA Act. Another fold of his contention is that the registered offences relate to theft cases. They are of an individual character and do not indicate any disturbance to public order. The satisfaction recorded by the detaining authority on the basis of these registered offences regarding the activity of the detainee being detrimental to public order is therefore without basis and therefore, the petition may be allowed and order may be quashed.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. Having regard to rival side contentions, it may be noted that factually there is no dispute about the statements of the witnesses having been recorded on July 30, 1999 and July 31, 1999 and the same have been verified on October 15, 1999. The order is passed on that very day.

#. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses in the statements are correct and genuine. Barring these statements, there appears nothing to indicate an exercise having been undertaken by the detaining authority for

verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detainee while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detainee of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under section 9(2) of the PASA Act, as there is no material to indicate the exercise as stated above (BAI AMINA v. State of Gujarat & others, 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & ors., 1993 (2) GLR 1659).

#. So far as the registered offences are concerned, it is found that they all relate to theft cases. Perusal of the papers relating to these offences relied upon by the detaining authority and supplied to the detainee does not indicate any disturbance to public order. It involves more or less, a law and order problem and therefore, subjective satisfaction arrived at by the detaining authority regarding activity of the detainee being detrimental to public order is without any basis. The order of detention, therefore, cannot be sustained.

#. In view of the above discussion, the reliance placed on by the detaining authority on the statements of anonymous witnesses and the registered offences cannot be upheld. The order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated October 15, 1999 is hereby quashed and set aside. The detainee - Salimkhan Lalkhan Pathan is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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